

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re: :
Case #11-42390
IMAGE RENT A CAR INC. :
:
For Chapter 7
-----:
Plaintiff Adversary Case #12-01288
MESSER AS THE TRUSTEE OF THE :
ESTATE OF IMAGE RENT A CAR, :
:
-against- :
:
Defendant : 271 Cadman Plaza East
ZILBERMAN, et al. : Brooklyn, NY 11201-1800
: February 5, 2014
: 2:53:15 p.m.
-----:

TRANSCRIPT OF MOTION TO OBJECT/RECLASSIFY/REDUCE/EXPUNGE
CLAIMS; MOTION TO COMPROMISE CONTROVERSY; PRETRIAL CONFERENCE;
CROSS-MOTION TO STRIKE DEBTORS' OBJECTION; CROSS-MOTION TO
DISMISS THE CASE; REQUEST TO REFER MATTER TO INVESTIGATION
BEFORE

JUDGE NANCY HERSHEY LORD,
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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Proceedings recorded by electronic sound recording;
Transcript produced by transcription service.

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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

1 (Proceedings commence at 2:53:15 p.m.)

2 THE CLERK: Matter numbers 31 through 36 in the
3 case of Image Rent A Car, Inc., and in the adversary
4 proceeding Messer versus Zilberman, et al.

5 THE COURT: First, we'll take appearances, but we
6 don't have an attorney on the phone. We have a
7 (inaudible). So never mind. Appearances.

8 MR. GARY HERBST: Gary Herbst and Jordan
9 Pilevsky, Lamonica, Herbst & Maniscalco, General Counsel to
10 the Trustee, Gregory Messer who's also present in court.

11 MR. DANIEL GERSHBURG: Your Honor, Daniel
12 Gershburt, Special Counsel to Gregory Messer, the Chapter
13 Trustee.

14 MR. GREGORY MESSER: Good afternoon, Your Honor,
15 Gregory Messer, I'm the Chapter 7 Trustee in this matter.

16 MR. BRUCE WEINER: Bruce Weiner, Rosenberg, Musso
17 & Weiner for most of the defendants in the adversary
18 proceeding.

19 MS. BARBIE LIEBER: Barbie Lieber of Lieber &
20 Lieber, representing the Digby Adler Group LLC, the
21 creditor in this case.

22 THE COURT: Mr. Herbst.

23 MR. HERBST: Yes.

24 THE COURT: Tell me who, either you or Mr.
25 Gershburt, or Mr. Messer, examined either at a 341 meeting,

1 a 2004 exam, or a deposition after the adversary
2 proceeding.

3 MR. HERBST: Your Honor, I am going to have Mr.
4 Pilevsky, who is intimately involved with this, present
5 that. The reason --

6 THE COURT: I just want to know who's been sworn
7 under oath in this case.

8 MR. HERBST: Sure, the reason I rose is I wanted
9 the Court to be aware, while we have a lot of people here,
10 my time will not be billed. I'm here because of the nature
11 of the allegations that have been leveled in the papers,
12 and I figured if the Court had some questions or concerns,
13 I'd be here.

14 THE COURT: I have a lot of questions. It's not
15 so much about the attorneys though.

16 MR. PILEVSKY: To answer Your Honor's question,
17 Schneior Zilberman, the principal of the debtor, was
18 deposed and sworn, gave sworn testimony.

19 THE COURT: Tell me when and whether it was the
20 341 meeting, the 2004 exam, or a deposition after the
21 commencement of the adversary.

22 MR. PILEVSKY: It was an examination before trial
23 after the commencement of the adversary proceeding, and I
24 believe --

25 THE COURT: So a deposition post-adversary.

1 When?

2 MR. PILEVSKY: In October of 2013.

3 THE COURT: Just a couple of months ago.

4 MR. PILEVSKY: A few months ago. He was also
5 sworn at the --

6 THE COURT: That was after the motion to settle
7 the case?

8 MR. PILEVSKY: Yes.

9 THE COURT: So who was deposed at the 341
10 meeting?

11 MR. PILEVSKY: The same individual.

12 THE COURT: Okay, so that was, he was deposed at
13 the 341 meeting - well, he testified for the corporate
14 Chapter 7 debtor at the 341 meeting, is that right? Did
15 anybody else testify?

16 MR. PILEVSKY: No. I don't believe so.

17 MR. GERSHBURG: No, Your Honor, I was counsel to
18 the creditor at that time. He testified at the 341
19 meeting, and additionally after that, when I representing -
20 -

21 THE COURT: So the 341 meeting was about when?

22 MR. PILEVSKY: Within 60 days after the filing.

23 THE COURT: Which is?

24 MR. PILEVSKY: The filing date was March 24,
25 2011.

1 THE COURT: This is before my time, which is why
2 I --

3 MR. PILEVSKY: May 3, 2011, Your Honor.

4 THE COURT: May 3 was the day of the 341?

5 MR. PILEVSKY: 341.

6 THE COURT: Okay, the 341. Okay, so he testified
7 at the 341 meeting, he testified post, at the deposition
8 which was post-adversary proceeding and post-motion. And
9 was there another time?

10 MR. PILEVSKY: There was --

11 MR. GERSHBURG: There was one time after 341,
12 Your Honor, when I represented the Digby Adler Group, we
13 brought him in and he was deposed approximately I want to
14 say six months after the 341 --

15 THE COURT: That was in a 2004?

16 MR. GERSHBURG: Yes, that's correct, 2004
17 examination.

18 THE COURT: And you were still representing
19 Digby?

20 MR. GERSHBURG: That is correct, Your Honor, at
21 the time.

22 THE COURT: Okay. So you deposed him in a 2004
23 in this bankruptcy case. And when was it?

24 MS. LIEBER: I'll give you the exact date. I
25 think I have the 2004.

1 THE COURT: Yeah, I saw it too.

2 MS. LIEBER: It's attached to the --

3 THE COURT: No, I know. It didn't print.

4 (pause in proceeding)

5 THE COURT: You can go slower. I'm not hurrying
6 you.

7 MS. LIEBER: Okay. I had printed it out.

8 THE COURT: You're the only thing on the calendar
9 today this afternoon. I have all the time.

10 MS. LIEBER: I printed it out before I came here.

11 (pause in proceeding)

12 THE COURT: It's part of your cross-motion to
13 strike you think?

14 MS. LIEBER: Oh, actually, it's attached, the
15 2004 exam is attached to the Trustee's motion to turn over
16 the assets of the case. So it's the turnover motion, it
17 was in April 2013 turnover motion that was made. Or, no,
18 April 13, I'm sorry, April 2013 was the order of the Court,
19 and the motion was made before. So the motion was made in
20 like February I think for the turnover of documents and
21 assets, and it was attached to that motion.

22 THE COURT: Okay, I'll find it.

23 (pause in proceeding)

24 MS. LIEBER: Oh, here it is. Here, I have a
25 copy. It was - it's November 29, 2011. November 29, 2011.

1 THE COURT: Okay.

2 MR. PILEVSKY: Just so Your Honor knows, I
3 apologize, after that November 29, 2011 date, we, again,
4 attempted to bring in Mr. Zilberman to continue the 2004
5 examination because it was short. I made a motion before
6 Your Honor's predecessor, Judge Rosenthal, who denied that
7 motion to continue the 2004 at the time.

8 MS. LIEBER: And if I could qualify what he just
9 said. When Judge Rosenthal denied this, as part of his
10 rationale for denying it - and this is a court order, so
11 Your Honor could see - he specifically said that it was
12 beyond the scope of a 2004 and that it should be done by
13 the Trustee in a deposition. So then --

14 THE COURT: Well, a trust commencement of an
15 adversary --

16 MS. LIEBER: Correct.

17 THE COURT: Right.

18 MS. LIEBER: So that was his rationale, and, of
19 course, he commented on the manner in which it was
20 conducted, but that was beside the point.

21 THE COURT: Okay. Joseph Balisok was the
22 attorney for the debtor?

23 MR. PILEVSKY: That's correct, Your Honor.

24 THE COURT: He's still the attorney for the
25 debtor?

1 MR. PILEVSKY: I'm not aware that he withdrew as
2 counsel.

3 MS. LIEBER: But actually, Your Honor, if I could
4 just qualify. When they filed the claims objection against
5 my client after three years, it was filed by the debtor
6 first, by Mr. Wiener. So he is now counsel, my
7 understanding. And then it was joined by the defendants,
8 and he now represents all the defendants, my understanding.

9 THE COURT: Well, maybe he does and maybe he
10 doesn't.

11 MS. LIEBER: Right, exactly.

12 THE COURT: Who else did you depose?

13 MR. PILEVSKY: The only individual that was
14 successfully --

15 THE COURT: In a 341 meeting, 2004 examination,
16 or a deposition?

17 MR. PILEVSKY: The principal of the debtor.

18 THE COURT: That was it.

19 MR. PILEVSKY: That was it, had intimate
20 knowledge of all the facts.

21 THE COURT: Not good enough.

22 MS. LIEBER: I'm going to clap on this.

23 THE COURT: Not good enough.

24 MR. PILEVSKY: Your Honor --

25 THE COURT: Not good enough. Not good enough.

1 Let me - I've done a little work here. It's not good
2 enough.

3 ATTORNEY: Inappropriate person.

4 THE COURT: I'm not saying I'm not going to
5 approve this settlement. I'm saying that we either can
6 have an evidentiary hearing about the settlement. We can
7 put this settlement on ice. We can go do more depositions.
8 Whether we do it as an evidentiary hearing and we put
9 people on the stand in my court or you do it outside and
10 then you bring me a report and then we have a further
11 hearing. We can discuss that. Sit down, Mr. Weiner.

12 Some of these people have passed through my court
13 before in another case. They're not new to me. And I'm
14 going to stay objective based upon that. But I will tell
15 you that in order to make sure that we had a proper Chapter
16 7 filing here and we didn't have serious fraudulent
17 conveyances or fraud or bankruptcy crimes or bankruptcy
18 fraud, there are a host of other people I think - well, not
19 a host - but probably a handful of other people I think you
20 need to put on the stand, and you can put them on the stand
21 right in front of me. And when they tell you they're too
22 ill to come, you can arrange for cars to get them here.

23 I don't see how you can go ahead without having
24 Mr. Nahim under examination, under oath. Or Mr. Baxt,
25 whose email address is David Lipsker, who was a principal

1 of another debtor in this courtroom, who's been here. Or
2 the secretary. Okay, you'll find all of these names, as
3 you know, are going to be Yiddish names --

4 MS. LIEBER: Miss Gray, Hani Gray her name --

5 THE COURT: -- that have English names. Hani,
6 Hannah I know, I know. Is it too expensive? Well, maybe.
7 So if that's the case, you know, you have decisions to
8 make. If Mr. Messer doesn't want to continue as Trustee, I
9 assume he can resign, and some other trustee will come on.

10 But, you know, you folks know me, you've been
11 before me. I don't do this very often, but I really think
12 that before you take a settlement of a fraction of what you
13 think went on here, and other names came up, and you came
14 before me for orders, and there weren't turnovers, and you
15 could've come for contempt. You need to go do that.
16 Again, which is not to say that I'm going to deny the
17 settlement, because I'm not, because every one of those
18 people who signed it I'd like to see under oath and find
19 out whether they were authorized.

20 Who were the shareholders in all of these
21 companies? Who is the CEO? Who has authority? I mean
22 right now on the face of it I can't go forward anyway
23 because you've got some folks out there, again, they're
24 always out there, who are saying that there's no authority.

25 So I'll hear you, but the bottom line at the end

1 of the day, and, again, it may very well be that this is,
2 you know, you're going to convince me this is a great deal.
3 But I think you have to, in circumstances of this
4 situation, particularly when some of these defendants
5 managed to get the California court to stay the
6 proceedings. Now I ordinarily would have said, you know
7 what, there's obviously no stay as to the non-debtors, and
8 if we need to determine what the debtor's claim is, we
9 should lift the stay and have the action proceed over there
10 and have them prove up their claim in California. Nobody's
11 made that motion, or at least I don't think anyone made the
12 motion. Again, this wasn't always my case.

13 MR. GERSHBURG: Within the past year, Your Honor,
14 that came up in this courtroom. Your Honor actually did
15 say that the stay does not apply to all the non-debtors.

16 THE COURT: Well, it doesn't, but I understood
17 from the papers that that's not right, that somewhere --
18 (interposing)

19 MS. LIEBER: Right --

20 THE COURT: -- in time in California, which you
21 may not have known when we discussed this, that the
22 California court has stayed it.

23 MS. LIEBER: Right, that's what happened, and we
24 went back to the California court and made a motion to lift
25 the stay. And at that time, the Court said, no, stick to

1 this case because in furtherance of judicial economy the
2 district court probably thought that the trustee would
3 administer the case, look at the assets, move forward with
4 avoidance actions, and then that would be resolved. But
5 you see --

6 THE COURT: You know, and then what you've done -
7 what you've done now to this plaintiff-creditor, when you
8 settle for this small amount of money, is they go try to
9 make all kinds of hay with respect to the fact that there's
10 nothing there or whatever went on in California. Don't you
11 see that happening? So --

12 MS. LIEBER: I'm sorry, could you repeat that,
13 Your Honor?

14 THE COURT: I said what could happen here is that
15 the parties who were defendants in that case can make a lot
16 of hay presumably --

17 MS. LIEBER: Exactly --

18 THE COURT: -- as to the amount of money you
19 folks settle for after a full investigation.

20 MS. LIEBER: Exactly, and that was --

21 THE COURT: Although it's a different cause of
22 action.

23 MS. LIEBER: Understood, but - exactly.

24 THE COURT: But --

25 MS. LIEBER: Your Honor --

1 THE COURT: And I guess I also don't understand
2 what happened - somebody has to explain this to me. At the
3 beginning of the case, and this is where I remember Mr.
4 Gershburt - didn't we agree in unusual circumstance that
5 Mr. Gershburt could come in here and do this work because
6 of the fact that he, you know, again, in an unusual
7 situation allowing him to do that. So what happened?

8 MR. GERSHBURG: Certainly, Your Honor.

9 THE COURT: It may have been that you were
10 charging by the hour, but what happened?

11 MR. GERSHBURG: No, it wasn't that I was charging
12 by the hour at all. I was completely cognizant of what I
13 started giving up when I stepped into this role. What I
14 will tell Your Honor though is, in its infancy when we were
15 filing motions, etc., and we were attempting to - in the
16 best that I can put it, Your Honor, we attempted to get the
17 defendant's cooperation in this. And when I say
18 cooperation, I meant not having to file motion after motion
19 to compel them to appear somewhere. And at some point,
20 general counsel had come in who had I should say a better
21 relationship and was able to facilitate this with happening
22 in a much easier fashion than myself coming before Your
23 Honor.

24 THE COURT: What kind of cooperation did you get?

25 MR. GERSHBURG: Well, just as an example, Mr.

1 Zilberman appeared for an examination that the trustee had
2 asked him to appear on. They did not want to - even during
3 the time I was there - Mr. Weiner's client did not want to
4 continue if I was even present in the room because of
5 animosity of the --

6 THE COURT: I remember that. I think I came in -
7 I think that was one of the first thing --

8 MS. LIEBER: No, no, no --

9 MR. GERSHBURG: No, Your Honor --

10 MS. LIEBER: -- he's referring to a deposition.

11 MR. GERSHBURG: This was recently. And he
12 essentially said I'm not doing this. He represents Digby,
13 it's your client, it's your client. And, again, Your
14 Honor, during that period of time it would have resulted in
15 myself making motion after motion and to bleeding any
16 resources, potential recovery as opposed to general
17 counseling coming in and facilitating something like that.

18 I will tell Your Honor that, as general counsel
19 took over, certainly there was no redundancy in terms of
20 the work that was performed. In other words, general
21 counsel took a leading role in it and I took a back seat
22 where I could in a situation like this.

23 THE COURT: Okay, well, you know, again, my
24 bottom line here is if your largest creditor is standing
25 here and saying - and maybe she's not so large, maybe it's

1 not so large - but the creditor is standing here and saying
2 don't approve it, and if spending a lot of money doing this
3 here is going to deplete whatever money and risk the
4 settlement, as it might do, who's harmed? The creditors
5 are harmed; three taxing authorities and the Digby
6 creditor, right? And professionals, but, unfortunately, we
7 get some of these cases where you gotta dig deeper and it
8 may be more costly, but you don't have a choice.

9 MS. LIEBER: May I speak, Your Honor, please?

10 THE COURT: No, let hear from Mr. Herbst.

11 MR. HERBST: Your Honor, I understand what you're
12 saying, and I don't have any problem certainly complying
13 with Your Honor's direction. Not at all.

14 This has been a difficult case clearly and
15 frustrating, and a lot of times these are the kinds of
16 cases, unfortunately, as Your Honor knows, that become just
17 a giant well. You try at some point to come away with the
18 best settlement you think you can so that it doesn't become
19 a self-fulfilling prophecy that the only people that get
20 paid at the end of the day are the professionals. Clearly,
21 in a case like this, there's been complaints that there's
22 too much time spent, but then you aren't doing enough to
23 pursue certain avenues of inquiry.

24 I get it, I understand it.

25 THE COURT: You're not going to hear it again,

1 even if, you know, if you want to cover yourself with the
2 office of United States Trustee in this case, I'll make it
3 very clear on the record that, to the extent you've got to
4 spend a lot more time, it's because I made you do it.

5 MR. HERBST: And, Your Honor, it didn't come from
6 the office of the United States Trustee, so --

7 THE COURT: Well, I'm saying --

8 MR. HERBST: -- but --

9 THE COURT: -- wherever it may come from.

10 MR. HERBST: But be that as it may, and it's
11 irrelevant to this point of Digby's participation in the
12 underlying settlement that they later objected to. I'm not
13 going to get into the underlying facts and how we reached
14 it. Your Honor has raised certain concerns.

15 The only question I raise to the Court is the
16 following. What we have is a case that has seen - it's a
17 two-party dispute for all practical purposes. It was in
18 California, they file here in an effort to avoid what's
19 going on in California. At some point, before we come back
20 with a settlement --

21 THE COURT: And I've see that scenario before,
22 again. An infringement case somewhere else, a filing here
23 in the hope of bringing that action here. I didn't let it
24 happen then. I don't know if it was attempted here before
25 I got here.

1 MR. HERBST: And understand, this settlement
2 didn't obviously infringe upon the creditor's rights to
3 pursue those claims. That was clear in the settlement that
4 we reached. What is an issue, whether it's here or
5 somewhere else, is the amount of the claim. So, for
6 example, if Your Honor ultimately determines that claim is
7 a claim of a de minimus amount, of \$10,000 or \$20,000, then
8 Your Honor's consideration of a settlement for \$120,000
9 will be different than if that claim is for 200 or 300.

10 THE COURT: Not if I think that enough of an
11 investigation has not - not if I don't think enough of an
12 investigation has occurred with potential wrongdoing.
13 We're not just here, I mean one of the things we're here to
14 do is to make sure that there are recoveries for creditors.
15 Okay? But the other thing we're here to make sure, I'm
16 here to make sure doesn't happen is that we don't have
17 nonsense. We don't have people, again, entities filing
18 bankruptcy cases in an attempt, with a shell after they've
19 conveyed assets out. That we don't have one principal
20 saying the other principal, when, in fact, maybe they're
21 not the principal. Or we don't have defendants in a
22 settlement then saying that they had no, the person had no
23 authority to enter it. Now, this may be somebody who's
24 just making noise, okay?

25 MR. HERBST: Well, this --

1 THE COURT: Notwithstanding that, notwithstanding
2 that, there are two many questions here as to - you know,
3 there's an email, and, again, that same person obviously
4 sent it --

5 MR. HERBST: Is that the Mr. Baxt, Your Honor?

6 THE COURT: Yeah, Mr. Baxt --

7 MS. LIEBER: No, no, no --

8 MR. HERBST: The one - understand.

9 MS. LIEBER: -- it's Connie Gray to Mr. --

10 THE COURT: I understand, but it's Connie Gray to
11 - we don't know what that email is; it's out of context.
12 And we're missing part of that email, the email that would
13 have been question, because obviously A, B, C, D, E, F, G,
14 she's answering somebody's questions. So we don't have all
15 of that, and, again, it's not in any context. Just give me
16 an example. Why is she reporting to him on how it's going
17 to get filed and what's going to get filed and the
18 possibility that's - and all of a sudden now he's the CEO
19 on the other company? And I'm telling, you we've both been
20 doing this a long time, we can't get this one lie without
21 going further.

22 MR. HERBST: Your Honor, I have no problem with
23 that. I wasn't suggesting that we weren't going to do that
24 due diligence, and just for Your Honor's reference, the
25 infamous or, Mr. Baxt, I understand he's been before Your

1 Honor on another matter. But just so Your Honor's
2 understanding, when this was raised in the objection, we
3 scheduled six, the meetings with Mr. Baxt and also through
4 the creditor said he could help facilitate that; he
5 cancelled every one of those meetings. And we attempted to
6 explore that. It didn't provide any benefit because --

7 THE COURT: Maybe it's because I have the Judge
8 before my name that I got him here to sit in there for
9 three days or four days.

10 MR. HERBST: It was - and when I found that
11 earlier, I said, well, then I guess we'll go that route.

12 The only point I raise to the Court was I fully
13 understand that you have to view this and all the facts and
14 understand what's happening and whether the people are
15 trying to improperly take advantage of the benefits of this
16 court.

17 My only point was, for the purpose of the Trustee
18 in determining an amount - forget the issue of the inquiry.
19 The inquiry is under a different portion I guess of the
20 fiduciary duty of a trustee. When you deal with the
21 settlement, whether Your Honor can approve a settlement on
22 a reasonableness, lowest rung standard dollar amount, what
23 we have is initially a claim filed of \$300,000, and when we
24 inquired further, it was told it was closer to a million.
25 All we've wanted to know was just how it was quantified,

1 which is not really set forth. I think there's a
2 complaint.

3 So I think, Your Honor, it would be helpful, dual
4 tracks, if you will, we'll do our inquiry, we'll proceed
5 accordingly --

6 THE COURT: Doesn't it require me to try that
7 portion of the case that's against the debtor? It's an
8 infringement claim, isn't it?

9 MR. HERBST: It is, then, Your Honor, I think the
10 question is of whether this goes back to California and
11 they try it out there. At least - the reason I say that is
12 at some point it's going to be brought before Your Honor on
13 a dollar amount. I --

14 THE COURT: Or, again, or if you dig deep enough
15 and you make enough people testify under oath - maybe that
16 doesn't even matter, I don't know - but if you do that, you
17 know, maybe you start getting some different numbers here.
18 Maybe you don't. And then you've got a situation where, at
19 least as to the debtor, you know, the creditor is satisfied
20 and I will be satisfied that you've done the proper
21 investigation into figuring out what went on here. I mean
22 they really go hand in hand.

23 I mean I understand that in the typical case, the
24 ordinary case, what you've done here so far would make
25 sense. Okay? A very difficult litigation ahead, you know,

1 there's lists of litigation, you know, again, it's
2 difficult and you come up with a number, but how do you
3 know when it would be time - they default - first of all,
4 you've got this thing over a long period of time. You
5 know, they're paying very little - not very little - but
6 they're paying whatever they're paying over a long period
7 of time, and all of a sudden there's a default, and now
8 you've got to look to your confessions of judgment, and
9 these folks say not authorized. So we now have a different
10 litigation, because that's what would happen here.

11 MR. HERBST: I understand, Your Honor.

12 THE COURT: Right now you would - I guess you
13 would - I don't know if you were prepared to go forward
14 because I cut you off at the beginning. But whether or not
15 you're prepared to go forward when we have somebody out
16 there who refuses to appear saying that two of the
17 defendants were not authorized, or Mr. Weiner - I guess Mr.
18 Weiner as to one or two - there were two lawyers, right, or
19 just you?

20 MR. WEINER: There were two lawyers. One of the
21 two lawyers is no longer - as of Monday of this week, is no
22 longer in private practice. And we're in --

23 MS. LIEBER: Which one is that?

24 MR. WEINER: And we're in the process of getting
25 - and those defendants are in the process of getting, or

1 that defendant is in the process of getting separate
2 counsel.

3 THE COURT: Okay, because I had --

4 MR. WEINER: That was --

5 THE COURT: -- this chart --

6 MR. WEINER: -- Group Travel.

7 MS. LIEBER: The attorney is who, Summerstein?

8 MR. WEINER: Summerstein took a job with the
9 government, and he's - well, actually with Legal Aid. And
10 --

11 THE COURT: It's not the government.

12 MR. WEINER: Well, it's not the government. He
13 took a job with Legal Aid. And he just started on Monday.

14 THE COURT: Okay, so you had - I mean you have
15 somebody saying that Adir (phonetic) Group and Group Travel
16 were not authorized.

17 MR. WEINER: We'll deal with that. I don't want
18 to argue about Mr. Baxt and why we think he's a fraud. Let
19 those factors come out when the Trustee finally gets him
20 into a room.

21 THE COURT: All right, I mean let's find out
22 who's Mr. Name (phonetic), Nahim, or whatever his name is,
23 and the other thing that was a little strange is, I guess I
24 don't know, at one point I guess I saw some transcript
25 where somebody said Mr. Baxt is not Israeli. I don't know

1 why somebody said, first, Israeli, and then he said he's
2 German.

3 Anyway, these - I don't think we could've gone
4 forward today in any event.

5 MR. WEINER: And, Your Honor, we're not going to
6 go forward. I just raise this issue because at some point
7 in this case I don't want to be in a situation where, after
8 the Trustee's business judgment, he decides on another
9 resolution. Your Honor's satisfied except to the extent we
10 still don't know what the amount of the claim is. Because
11 at the end of the day, the Trustee has to be able to pay
12 claims.

13 Now, whether it's going to be litigated here or
14 litigated in California, it needs to move forward on its
15 own merits at least to determine what the amount is.

16 THE COURT: Or settled as, again, the idea is
17 you'd have to - if it's settled as to this defendant, once
18 I approve the settlement, it's settled. I mean there's a
19 stay and there's nothing - you can't proceed against the
20 debtor anymore.

21 MR. WEINER: No, the only reason I raise that is
22 there could be a circumstance where, depending on what the
23 amount of the claim is, that there's a surplus ironically
24 in a case like this. And it would seem, when Your Honor
25 considers the interest of creditors, are the creditors

1 being paid in full or are the creditors being paid just a
2 small portion or a larger amount. That's why I was trying
3 to get to the point of at some point I guess that'll be a
4 consideration under 9019 in weighting the factors of the
5 interest of creditors. If it's 100 cent case, that
6 obviously is a different factor.

7 THE COURT: Well, again, at some point, we lift
8 the stay or you've satisfied the creditor with enough of a
9 settlement, so you exchange releases. I mean I don't know
10 how --

11 MR. WEINER: I'll make it simple, Judge. I'll
12 put on the record right now, we will prepare a stip,
13 consent to relief from stay. Maybe we'll reach a
14 resolution somewhere down the road, I don't know. We'll
15 consent to the relief from stay. They can go and litigate
16 the amount of their claim. And if there was any concern or
17 confusion before, and then obviously this won't be the
18 basis for them to complain that, well, the Trustee
19 investigated and settled it at this amount, that'll be done
20 on its own weight and its own merit. So we'll consent to
21 relief from stay --

22 THE COURT: But it's two different things.

23 MR. WEINER: Right.

24 THE COURT: It's two different things. If it
25 doesn't matter, again, if it's a surplus, it's a surplus.

1 If there's any fraud that went on here or any fraudulent
2 conveyances that went on here, or anything that I need to
3 refer to the U.S. Trustee or the U.S. Attorney's Office,
4 we're going to figure that out and whether at the end of
5 the day it's going to bring more money in than what you're
6 settling for or less, I don't know, but we have to go that
7 route in this case.

8 MR. WEINER: We are. I'm not suggesting to the
9 Court one bifurcates the other. We absolutely are going to
10 do what Your Honor has directed, and we have no problem in
11 doing that. I'm just suggesting to avoid another trial at
12 a later date, to hold the case up in any manner is go
13 ahead, liquidate your claim in whatever form, whether it be
14 here. If they don't want to do it here, do it out in
15 California. Get the claim liquidated, and we can then, of
16 course, proceed and do the investigation we have to do.

17 MS. LIEBER: Your Honor.

18 THE COURT: Yes. Your turn.

19 MS. LIEBER: Thank you. Okay, I worked hard on
20 these papers you saw, and there's so many things that are
21 mentioned here that I would like to respond to. There's so
22 much discussion about liquidated claims.

23 What I want to talk about is where we are here.
24 And this case, when it was filed, should have never been
25 filed here. It was a case that had, basically it was, as

1 they say, a two-party case. When we filed, after we filed
2 here, the petition - after the debtor filed, the petition
3 was barebones. There was no --

4 THE COURT: But it was originally a voluntary 7 -
5 -

6 MS. LIEBER: It was a 7.

7 THE COURT: -- in the beginning.

8 MS. LIEBER: It was a barebones petition. It had
9 no assets. Creditors were listed, one of the supposed
10 creditors, insiders, one Mr. Sebagh who was one of the
11 founders was listed as a creditor holding a \$250,000 claim.
12 There were no transfers that were mentioned in the
13 schedules, statement of financial affairs. There was --

14 THE COURT: Excuse me. Did you try to depose Mr.
15 Sebagh?

16 MR. GERSHBURG: Yes, Your Honor.

17 THE COURT: And what happened?

18 MR. GERSHBURG: We can't find Mr. Sebagh.

19 There's no address. As it is with many of these
20 individuals, Mr. Sebagh cannot be found. He apparently
21 lives somewhere with Mr. Zilberman or in the same contact.
22 We couldn't find him at all. I went out of pocket myself
23 when I was representing Digby to hire a personal
24 investigator, private investigator, to go to these lots and
25 try and find these individuals. And just as a matter of

1 reference, not that it matters one way or the other, but I
2 believe during Mr. Zilberman's either deposition or during
3 some sort of discovery, we found out he owned somewhere
4 around 20 or so, you know, different companies here and
5 there. So it's almost impossible, it was almost
6 impossible, I should say, for us to track down these
7 individuals. The same as it was for David Baxt when we
8 tried to get him as well.

9 THE COURT: It's not impossible.

10 MS. LIEBER: There's a lot here, Your Honor, but
11 what I want to say is this. We had spent - my client had
12 spent a lot of money here originally with Mr. Gershburg.
13 The case was filed; there was a 341 meeting. Mr. Zilberman
14 didn't disclose anything about the facts. He said that
15 there may have been three to eleven cars, but he didn't
16 disclose transfers or anything like that.

17 What happened though is there were turnover
18 motions that my client had paid for, and they kept on
19 defending against them because they didn't want to turn
20 over any property. So they never turned over tax returns,
21 they never turned over any financial statements. We had no
22 clue. The only thing that my client was able to, it helped
23 a lot, were these bank statements that they go, and the
24 bank statements literally showed that literally maybe for
25 14 months there were deposits by Group Travel Solutions at

1 the 391 location of like \$3.5 million into this Chase
2 account. Now, we only have one Chase bank account
3 statement -- we only have statements for one account, but
4 we know that they had a number of statements, and that's
5 actually reflected in the bank statements themselves
6 because it shows all of these transfers to other accounts.
7 And Mr. Zilberman didn't deny it.

8 But in any event, so Mr. Gershburg made motions to
9 compel discovery. He conducted a 2004 exam. What happened
10 at that point, from my reading because I have read, I have
11 reviewed the documents on the docket very carefully, he had
12 a period of time within which to depose Zilberman, and I
13 think there was a remaining three or four hours because
14 Zilberman had walked out. At that time, Mr. Gershburg -
15 and he was very evasive. And at that time, Mr. Gershburg
16 didn't have an opportunity to even depose Zilberman as to
17 the deposits, the \$3.5 million of deposits made into the
18 account.

19 Now, just understand one thing, Judge, when those
20 deposits were made, those deposits, it was 3.583, 3,000,583
21 - I'm sorry - 3 million 5 hundred and - \$3.583 million, I'm
22 sorry, between January 2009 to May 2, 2010. Okay? Now,
23 they filed the case the following year on March 2011 right
24 after we had, they had failed, they were trying, they had
25 made three motions to dismiss the district court litigation

1 and change the venue. They were denied, all three motions
2 were denied.

3 In the district court we had made two motions to
4 compel the discovery and then sought sanctions because,
5 quite frankly, to prove our claim when it comes to
6 infringement, and I have conferred with trademark
7 attorneys, to prove our claim it basically is dependent on
8 their profits. And now Mr. Zilberman recently, when he was
9 deposed, literally has said that he has no books and
10 records; he has disposed of them. So he has spoiled the
11 evidence.

12 Now, after - when - before - my client had
13 invested a lot of time and a lot of money, and there was a
14 2004 examination, there was a 341 examination. Meanwhile
15 my client's the one who's spending that. The Trustee
16 didn't make the motion for the 2004. He didn't even
17 attend, to tell you the truth. And, in fact, Judge
18 Rosenthal had invited him to attend.

19 But in any event, at a certain point, after my
20 client has gotten the bank statements and all these
21 documents - one moment, I want to have an opportunity.

22 THE COURT: What you do there, unfortunately,
23 gets picked up. So it's much louder than you think. Go
24 ahead.

25 MS. LIEBER: After my client spends all this time

1 and money, they decide, yeah, this is a great case. You
2 can see from the docket there's a notice of discovery of
3 assets. Why? Because my client has spent the time to
4 actually discover, get bank statements, get what it can
5 even though there's actually a critical bank statement of
6 April 2010 which still is missing and still hasn't been
7 turned over, notwithstanding your turnover order and
8 notwithstanding your turnover order, that automobile that
9 was referenced in the turnover order is still not turned
10 over, but that's another story.

11 So what happened was Mr. - at a certain point Mr.
12 - can you excuse me? Mr. Gershburt needed more time to
13 depose Mr. Zilberman, and at that point, they must have
14 conferred with each other. Mr. Gershburt asked my client,
15 you know, can he be retained by, can he be relieved because
16 the Trustee would like to hire him to investigate further
17 and to commence this action. My client said, well, okay,
18 you're going to commence this action, that's fine,
19 otherwise, I could dismiss this because at this point now
20 we're at the point where I now know that I am the only
21 creditor because the bar date has past and no other
22 creditors have been filed. Okay?

23 Then they go ahead, but based on the fact that
24 they were going to conduct that further deposition and
25 further investigation which they should have done even

1 before they commenced this action, my client relieved
2 counsel, and he had already spent a ton of money with Mr.
3 Gershburg, upon which the adversary complaint was based and
4 which they want to now settle. In other words, my client
5 spends the money, they commence an adversary, and now they
6 want to settle for a fee that covers their commission.

7 Now, what gets worse is this. When they file --

8 THE COURT: I understand.

9 MS. LIEBER: When they file --

10 THE COURT: I understand you're upset --

11 MS. LIEBER: I'm very upset.

12 (interposing)

13 THE COURT: I understand where - you know, I hear
14 where it's coming from.

15 MS. LIEBER: I sit here and I want to kill myself
16 because I know that there's so many things that just are
17 not - they're hiding, okay.

18 THE COURT: Believe me --

19 MR. HERBST: Your Honor --

20 MS. LIEBER: Wait, one moment.

21 MR. HERBST: I'm sorry, no, no, I patiently --

22 MS. LIEBER: I want to finish please.

23 MR. HERBST: She can say what she wants, but she
24 talks about something that we're hiding --

25 MS. LIEBER: Okay, excuse me, maybe the wrong

1 word.

2 MR. HERBST: I've not --

3 THE COURT: Mr. Messer and Mr. Herbst's firm are
4 before me all of the time --

5 MS. LIEBER: And they're not hiding --

6 THE COURT: -- and they're not hiding --

7 MS. LIEBER: Right, I didn't mean that.

8 THE COURT: -- and it would be very shocking to
9 me, again --

10 MS. LIEBER: I would like --

11 THE COURT: These decisions are made very, very
12 often, you know, they have a lot a lot of cases, and it's a
13 question of --

14 MS. LIEBER: But I want --

15 THE COURT: -- based upon the claims, what makes
16 sense in his business judgment, all of that. It happens to
17 be, as I said, maybe I would've come out here with a
18 totally different view of the world if some of these folks
19 hadn't --

20 MS. LIEBER: But now --

21 THE COURT: -- crossed my path since I'm sitting
22 here.

23 MS. LIEBER: I would like to continue because
24 it's important. So now at this point, they seek the
25 retention of Mr. Gershburg. They put in an application,

1 and it's objected to by the debtor, at which point Mr.
2 Jordan Pilevsky files a reply, okay, and in his reply - now
3 this is the same (inaudible) would like to say our claim is
4 nothing. So in the reply he says --

5 MR. HERBST: Your Honor, I'm sorry, counsel can
6 continue on --

7 (interposing)

8 MR. HERBST: -- state the facts --

9 (interposing)

10 MR. HERBST: -- all I said it hasn't been
11 determined --

12 MS. LIEBER: Fine, in the mean --

13 MR. HERBST: -- there's no quantification.

14 THE COURT: Okay, please, I'm not - I want to
15 hear her.

16 MS. LIEBER: Thank you. Thank you. In the reply
17 he writes, he explains that, you know, that in the 2004
18 transcript, as reflected in -- the 2004 lasted less than
19 four hours, including the break. That's because they had
20 more time to continue it. And that the bar date has past.
21 The universe of proofs of claims that were filed against
22 the estate total 304,000. Of that amount 300 is
23 attributable to the creditor's proof of claim.

24 Then they state that --

25 MR. PILEVSKY: Just for clarification, which

1 reply are you referring to?

2 MS. LIEBER: I'm looking at a reply --

3 MR. PILEVSKY: What docket number?

4 MS. LIEBER: Oh, I don't know. It's dated - it's
5 Chapter 7 Trustee's reply in further support of the
6 Trustee's application for an order to approve the
7 employment of Daniel Gershburg. It was after the debtor
8 had objected to it. And then they say, "As the largest
9 unsecured creditor of the estate, the creditor shares a
10 common goal with the Trustee" --

11 THE COURT: I understand, but - I understand why
12 --

13 MS. LIEBER: -- "of maximizing an ultimate
14 recovery."

15 THE COURT: -- again, what I said before was - it
16 doesn't happen that often, they made a showing --

17 MS. LIEBER: Right.

18 THE COURT: -- and I approved it.

19 MS. LIEBER: Right.

20 THE COURT: But remember it was post.

21 MS. LIEBER: And the idea here is that we are now
22 three years later, okay, they have literally taken the
23 position that we're the creditor, we're the one with the
24 claim. What they want to do at this point - what I want to
25 say is this. So now they would - they basically have come

1 to this court, despite all of the admissions in the --

2 (interposing)

3 THE CLERK: -- I need you to speak clearly into
4 the microphone.

5 MS. LIEBER: Sure. Despite all of the admissions
6 in Zilberman's deposition, okay, they have come to this
7 court simply saying that, hey, you know what, we'd have
8 entered into the same settlement agreement even without the
9 deposition. Now, they act as though the same transfers
10 were made or referenced before they even deposed -
11 (inaudible - problem with microphone) that's what they've
12 said to the judge.

13 Well, first of all, I literally have marked up
14 this complaint. (inaudible) really well (inaudible) there
15 was so many more facts that we have now, undisputed facts,
16 admissions in the testimony. The bank statements, for
17 instance, we knew that there were deposits of a lot of
18 money, \$3 million, which dwindled to \$3,000 literally nine
19 months before the bankruptcy was filed. We didn't quite
20 know the relationship between Group Travel Solutions. We
21 didn't know - we knew that money was going to Adir Plaza.
22 We didn't quite know that Adir Plaza was owned completely
23 by Zilberman.

24 But in any event, what we have learned, what was
25 really not known here, is Zilberman has confirmed that the

1 money that was from the debtor that ended up going to these
2 lenders on the bank statements were lenders for Adir Plaza.
3 Essentially, what we learned is Adir Plaza is a company
4 that had no operations independent of Group Travel, of the
5 debtor. It was run by Zilberman. What he did was he was
6 sued by another - the debtor is a successor company to a
7 defendant, which we didn't know this either, Adir Rent a
8 Car.

9 What we learned in the deposition was Adir Rent a
10 Car was closed. Then the debtor is formed in the same 391
11 Empire. Why was it closed? Because there was a \$400,000
12 lawsuit against it, which Zilberman calculates as 4,500.
13 So he opens up this debtor.

14 Then what happens is he operates the debtor. It's
15 really Adir Rent a Car, but he's closed that, now it's a
16 new sign, now it's the debtor. And what he did was he took
17 out the assets, he basically would operate this debtor and
18 then transfer \$3.8 million in like 14 months before the
19 bankruptcy, and then (inaudible) vehicles that used to rent
20 out by the debtor were placed in Adir Plaza's name. Adir
21 Plaza has no employees, it has no operations. It's just a
22 shell, okay, it's just a shell.

23 THE COURT: Again, I only read pieces of this,
24 but wasn't Mr. Zilberman trying to say that rich Uncle Phil
25 --

1 MS. LIEBER: Well, no, I'll get to that.

2 THE COURT: -- was the one who had basically came
3 up with all of the money to pay the lenders, wasn't that --

4 MS. LIEBER: No, no, no --

5 THE COURT: Oh, that's not --

6 MS. LIEBER: -- no, I'm not going to get to that,
7 okay.

8 THE COURT: I'm letting you vent here. You
9 understand that none of this is evidence, that I don't take
10 evidence this way --

11 MS. LIEBER: Okay, then let me vent. Let me vent
12 then.

13 THE COURT: Okay. I'm letting you vent so
14 everybody knows --

15 MS. LIEBER: I appreciate it. I have been up all
16 night --

17 (interposing)

18 THE COURT: -- people sitting in there --

19 MS. LIEBER: Then let me vent.

20 THE COURT: -- under sworn affidavit, not from
21 lawyers, but I'm letting you vent.

22 MS. LIEBER: I appreciate that so much.

23 THE COURT: Go ahead.

24 MS. LIEBER: So much. So then what we have
25 learned in this deposition is that, what we didn't know,

1 was that Adir Plaza had all the cars, had all these
2 vehicles, and when I refer to vehicles, I'm talking about
3 vans that are, passengers vans that have 15 people in them
4 because they're for makels (phonetic), they might be for
5 somebody in the entertainment business. I mean these are
6 very expensive cars. They're vans, they're often Mercedes,
7 they're special passenger vans. It's not just a typical
8 car.

9 And, in fact --

10 THE COURT: Well, they also may be beat-up 15-
11 passenger vans that the Orthodox community takes to --

12 MS. LIEBER: Right. Well --

13 THE COURT: -- takes to hospitals for people, I
14 mean there's all these good (inaudible) why these vans are
15 used.

16 MS. LIEBER: I just went online to the Image Rent
17 a Car website yesterday, and I saw a - what's the most
18 expensive one?

19 THE COURT: It doesn't matter.

20 MS. LIEBER: (inaudible - problem with
21 microphone) In any event, (inaudible) all of these
22 vehicles were titled Adir Plaza. What we didn't then know
23 is that there's a company GTS - we knew that there was a
24 company, we didn't realize that in April of 2011, April of
25 2010, a month after my client commences the last suit, this

1 company's formed. What we didn't know was name is the
2 (indiscernible) was his (inaudible) uncle, (inaudible)
3 uncle. (indiscernible) to get the name it was the one who
4 was operating. He's a relative; now he's operating GTS.
5 What we didn't know was all those vehicles, which were
6 purchased by the debtor, (inaudible) were for the benefit
7 of Adir Plaza. Why? To finance the cars. So millions of
8 dollars were transferred to Adir Plaza.

9 Now they're in the title, now these cars are
10 titled in Adir Plaza's name. Now, Adir Plaza we now find
11 out transfers all of these vehicles to GTS, plus the debtor
12 transfers the name, the debtor transfers the website, the
13 debtor - and to make it worse -

14 THE COURT: Well, but what is - it'll come down
15 to what came from debtor. I mean, again, the website has
16 some value, the name has some value. The question at the
17 end of the day is going to be those millions of dollars,
18 were they from the debtor or were they from some other
19 source?

20 MS. LIEBER: Zilberman has admitted that that was
21 the only source. Zilberman has admitted under oath that
22 the only source of income was from Image because Adir Plaza
23 had no independent business.

24 So then all the cars are placed in Adir Plaza, now
25 they're transferred to GTS, and now we find that Nahim, the

1 brother-in-law, we asked in the deposition, so, what did
2 you pay for it? Do you have anything, documentation? No.
3 First, there were a couple of different statements, and
4 then finally there were inconsistent - finally, he says,
5 well, I personally got cash. Nahim, what did you do with
6 it? I put it up - I kept it for myself. Well, I paid some
7 street people. Street people? Yeah, I paid street people.
8 Was it \$5,000? Yeah, about that. And what did I do with
9 the rest? I took it, it was for me.

10 Also, what he dose is in Adir Plaza's name he also
11 purchases property. Guess who has the property? Nahim.

12 So this deposition was never made, even though Mr.
13 Gershburg had informed the court that he never even
14 finished the deposition and that my client thought, when he
15 was going to be retained, that they were going to do a
16 deposition, they don't do a deposition. Instead, they
17 commence a complaint without any of this information,
18 without knowing that Connie Gray was an officer of the
19 debtor. She literally signed transfer documents from GTS
20 and Adir Plaza and transfer documents - Image had cars also
21 - from Image to Adir Plaza. Image to GTS, she signs on
22 behalf of GTS, she signs on behalf of Image.

23 If they had known that, if they had done their due
24 diligence, even if they hadn't done it before, they
25 should've done it after. Because what happened was, what

1 they could've done is they -- probably that complaint would
2 have looked very, very different. And although they want
3 to say that they would have entered into the same
4 settlement if they had known these facts, that's not true.

5 But in any event, what they could have done with
6 these facts is they could've said, hey, these are alter
7 egos of these - these are all alter egos. Now we have them
8 admitting that there's no documents between the parties,
9 that they had no independent operations before they were
10 formed, and relatives are operating.

11 So, you know, Judge, all of this, all the assets
12 belong, all of the assets belong to this debtor. And
13 instead, during the past there years, the cars have been
14 sold, nobody's investigated, it's --

15 THE COURT: Their point though, their point
16 though is the following, that before they spend hundreds
17 and hundreds of thousands of dollars, or time, hundreds and
18 hundreds of thousands of dollars of legal time, in order to
19 - in a case which is not an easy, in a case where nobody
20 wants to show up, where you've got, you know, maybe it's a
21 shell game, maybe it's not, but no one's going to make it
22 easy for them. That if, in fact, all it got is a few
23 thousand dollars in tax claims and your client's claim, and
24 we have no idea what that claim is, should they be spending
25 that kind of money? And in most cases, if they did, they

1 would be criticized. The Trustee would be criticized, and
2 counsel would be criticized.

3 MS. LIEBER: But my --

4 THE COURT: Which is why I said at the outset,
5 okay, that I don't find any fault on their part --

6 MS. LIEBER: Wait, wait, wait, commencing a 36-
7 page complaint?

8 THE COURT: But the point is that I'm not going
9 to make a finding, whether they're at fault or not at
10 fault. All I'm saying in this case, for my reasons and
11 based upon, again, what I've seen here and what I know, it
12 seems to me we have to go further. We have to dig further.

13 MS. LIEBER: Okay, now I want to say one other
14 thing. So had my client known that here in this retention
15 they're saying, oh, this is for the benefit for the estate,
16 our interests are parallel. That's what they said in the
17 retention. And we have a claim of 300,000, and, again,
18 they spoiled the evidence now at this point. They spoiled
19 my client's evidence.

20 THE COURT: They might have done that anywhere.

21 MS. LIEBER: My client though, yeah, but if I
22 were in district court right now, if we were in district
23 court and that happened and this testimony, the judge,
24 because when people spoil evidence, the judge is going to
25 grant a very hefty judgment. And especially that what we

1 do know is \$3.5 million was deposit, and that is what we
2 have to show; we have to show their revenue essentially,
3 and from we know, it's been millions.

4 But I want to say one thing. The case law makes
5 it very clear, the two Supreme Court cases that I'm
6 thinking about, one is MariMar which is basically saying
7 that these cases don't belong in here. And the other one,
8 Moore v. Bay, which then is a codification --

9 THE COURT: One's very old and one's more recent.

10 MS. LIEBER: -- 550 --

11 THE COURT: You're talking about MariMar --

12 MS. LIEBER: Right.

13 THE COURT: -- dismissal of a voluntary case for
14 lack of good faith, voluntary dismissal, but nobody's
15 (indiscernible) voluntary. MariMar, you're talking about
16 MariMar --

17 MS. LIEBER: Yeah, MariMar was not a voluntary
18 dismissal. What happened in MariMar was that there was
19 this Chapter 7 debtor had concealed transfers and he
20 concealed an asset, a trust. And the courts looked at -
21 and he wanted - because he was caught, he wanted to use the
22 conversion provisions to --

23 THE COURT: Right, conversion to 13 or dismiss -
24 yeah --

25 (interposing)

1 MS. LIEBER: And the court looked at the
2 dismissal and conversion, said, you know --

3 THE COURT: What otherwise would have been
4 absolute right, the court said lack of good faith, we're
5 not going to let you do it. I know, I'm familiar with the
6 case.

7 MS. LIEBER: Right, it's cause, that's right, and
8 they commented that bankruptcy courts look to see for
9 dismissal they look at bad faith, they look at pre-
10 bankruptcy behavior, and they dismiss. Okay. And they say
11 it's, the case is for the honest but unfortunate debtor,
12 that's the big quote, and, unfortunately, here it doesn't
13 exist.

14 But the other case that I want to say is the Moore
15 v. Bay case. In that case, the 544 and a 550 are the
16 codification of that case, and basically, as a matter of
17 law, 550 and 540, when there's - those provisions say that
18 a debtor that is a defendant, if they were to prevail
19 against the defendants, have to turn over the property.
20 There's no qualification on the credit, there's no
21 qualification on the claim of the creditors. I have cited
22 to a number of cases in this, and it's clear, it's clear,
23 it's written in stone. There is no exception to that.

24 So my point is that for them to stand here and
25 ignore what, ignore the likelihood of success based on the

1 admissions in Zilberman's deposition, which, quite frankly,
2 they could probably move for summary judgment. Based on
3 those admissions, they could have moved for summary
4 judgment against him without even any testimony because
5 they already have the admissions, they have the DMV
6 documents where he has signed, Sebagh has signed, he's got
7 the admissions. They could have come to this court and
8 moved for summary judgment. Okay?

9 And the point is that for them to now turn it
10 around on us that we have to prove our claim, we didn't
11 want to be here. We would have been - this case would have
12 been dismissed.

13 THE COURT: I understand. First of all, there
14 might have been issues of fact --

15 MS. LIEBER: So it's contrary --

16 THE COURT: -- but put that aside for a moment.
17 But I understand, I think what you're saying to me is that
18 if you had known now, if you had known then what you know
19 now about how this would have unfolded, you might have been
20 the first one coming here to seek a dismissal of this case.

21 MS. LIEBER: Not only that, we have funded this
22 investigation --

23 THE COURT: I understand.

24 MS. LIEBER: -- based on, you know, constantly,
25 they're always constantly saying, well - if there was no

1 claim, honestly, if they thought three years ago or two
2 years ago there was no claim, well, then they shouldn't
3 have retained Mr. Gershburg. If there was no claim, why
4 now after all these years. And the other thing is they're
5 turning it around. The focus here is is this settlement?
6 It's not just on a claim. You have to look, there's so
7 many factors which basically they just list it in their
8 settlement.

9 THE COURT: The point is it's two different -
10 again, it's two different things. A trustee's job, to
11 maximize the assets and to make sure, investigate
12 preferences and fraudulent conveyances and bankruptcy
13 wrongdoing of all kinds, that is one obligation.

14 MS. LIEBER: Right.

15 THE COURT: And to bring assets into the estate.
16 And then you go look at claims.

17 MS. LIEBER: Exactly. Then.

18 THE COURT: However, I am telling you that there
19 are entities that examine into this, courts have done it
20 too, and they're not supposed to just, again, you're not
21 just supposed to incur legal fees to come up with dollars
22 in an estate if there's more than enough money to pay for
23 creditors. It happens all the time. You have a personal
24 injury action settlement. Trustees come in here all the
25 time and say, Your Honor, or some other (indiscernible),

1 we're settling for this amount. We have litigation risk
2 here, we've got this possible defense, but more than that,
3 the total number of claims is X. So it does have a bearing
4 when you decide, when you get a settlement offer to
5 determine what the claims are, it has a bearing.

6 But, again, for a whole host of reasons, and also
7 because I truly feel that when people try very hard not to
8 be deposed or don't comply with orders of this Court or
9 don't show up, I don't like to roll over. If these folks
10 wanted to depose certain people, and sounds like they did,
11 and they just were frustrated, that's really not good
12 enough. And they got the message.

13 MS. LIEBER: And I want to just say one thing,
14 that they did notice Nahim and Gray for depositions. They
15 liberally granted - I was very - I felt that they were
16 liberally granting too many adjournments, and finally it
17 was, there was a final adjournment date, and neither of
18 them showed, but yet they're still going forward with a
19 settlement. I'm like, wait a second, the authority is now
20 put - you still feel confident? It's like our job to prove
21 that this is authorized? Wait, once now you know there's
22 an issue, why not subpoena, why not make a motion before
23 Your Honor and compel his attendance? And, quite frankly,
24 as a trustee they never did serve a notice of Sebagh when,
25 as the trustee, the trustee never served that notice to

1 Sebagh for a deposition.

2 But my point is, and it's a very important point,
3 there's a lot of case law under 544 and 550 which basically
4 say that you - which say that you are not to consider the
5 claims. You are to go after the property. And had that
6 deposition been conducted, they should have conducted that
7 deposition because the complaint would have looked
8 different, and they should have then made a determination.
9 Instead, after commencing this complaint, 36 pages, 26
10 counts, there was no notices of deposition on anyone.
11 Instead, months passed, and instead, when I had spoken to
12 counsel because I was kind of shocked, they had revealed,
13 Mr. Gershburt and Mr. Pilevsky had revealed that the
14 Trustee, without their participation, entered into a
15 settlement for 120,000 which I was really shocked.

16 THE COURT: Well, that's not my business.

17 MS. LIEBER: But --

18 THE COURT: When the Trustee talks to counsel,
19 that's really not my business.

20 MS. LIEBER: But I'm not sure why this case
21 should be here.

22 THE COURT: But, again, I think - now, ironically
23 it's Mr. Baxt who didn't want me to approve the settlement
24 today. It's kind of a twist of - right --

25 MS. LIEBER: I'm sorry?

1 THE COURT: -- it's ironic, isn't it correct --

2 MS. LIEBER: Oh, oh, oh --

3 THE COURT: -- that Mr. Baxt didn't want me to
4 approve the settlement today. He's kind of getting I guess
5 what he wanted, depending upon who he is or where he is in
6 all of this. But that was the nature of his --

7 MS. LIEBER: Well, he --

8 THE COURT: -- what he filed. He filed back in
9 August saying that folks didn't have the authority to sign.

10 MS. LIEBER: What he has said to me is that he -
11 I guess he renders trademark services. He formed Group
12 Travel Solutions and he was I guess on the Department of
13 State, he's their president and CEO and whatever. And what
14 he has said is that - and mail should be going to him -
15 what he has said that without his consent, Nahim, who is
16 not named on the Department of State as having any
17 interest, then is now operating the debtor. Operating
18 there.

19 And so what he wants you to know is that he did
20 not authorize the retention of any counsel, and --

21 THE COURT: Well, I don't know what he wants me
22 to know. All I'm saying it's kind of ironic - but, again,
23 bottom line, what I don't want to do, and I'm not letting
24 any defendants out of the settlement, I'm not denying the
25 settlement. I'm going to adjourn these out far enough so

1 that there can be due diligence in connection with the
2 settlement which, again, then they can decide to walk away
3 - come back to me and seek to have the settlement withdrawn
4 or denied or whatever it is because of information they
5 found out and continue with the complaint or not. But I'm
6 not right now, I'm not denying it. I'm adjourning them
7 out.

8 MS. LIEBER: And in terms of my motion to dismiss
9 this case, you know --

10 THE COURT: I was going to adjourn everything.

11 MS. LIEBER: Okay, you want to adjourn that.
12 Because, quite frankly --

13 THE COURT: Because the other thing that I have
14 before me is your request to send this to the U.S.
15 Attorney.

16 MS. LIEBER: Right.

17 THE COURT: I think we need to have a record here
18 before I send it to the U.S. Attorney more than what we
19 have.

20 MS. LIEBER: Okay, good.

21 THE COURT: And I may decide there isn't enough
22 to send to the U.S. Attorney.

23 MS. LIEBER: Okay. Good.

24 THE COURT: Mr. Weiner, do you want to come up
25 here?

1 MS. LIEBER: Thank you.

2 MR. WEINER: Your Honor, I've sat here patiently,
3 and while I think that - I don't want - the fact that I
4 don't think this is the appropriate time to argue all the
5 points of the motion, I know you understand, you let Miss
6 Lieber vent. I could hear and vent. There's very little
7 of what she said that my clients agree with. My clients
8 are confident that when the facts about Mr. Baxt should
9 come out, that everything she said about his role in these
10 things is not true --

11 THE COURT: It's really not so much about Mr.
12 Baxt --

13 MS. LIEBER: Right.

14 THE COURT: I want to know about Mr. Nahim and
15 Mr. - I mean --

16 (interposing)

17 MS. LIEBER: And Mr. Zilberman.

18 THE COURT: And I want to know about Hani. I
19 mean I want to know --

20 MR. WEINER: Yes --

21 THE COURT: I want to know these people, and I
22 want to know what they all did in these cases and who they
23 are.

24 MR. WEINER: Judge, to the extent that I can, I
25 will be sure that they appear to be deposed by the Trustee

1 and his counsel. So they are defendants in this case, and
2 if the Trustee notices them for deposition, they will have
3 to show up.

4 THE COURT: Well, they're already on notice for
5 deposition on --

6 MR. WEINER: There's been no deposition. I don't
7 represent Miss Gray. I'm not aware of any deposition of
8 Mr. Sebagh who is my client. And Mr. Zilberman has
9 appeared for deposition. And Mr. Nahim is also not my
10 client.

11 MS. LIEBER: Who is representing them since Mr.
12 Summerstein was representing them?

13 THE COURT: We don't know.

14 MR. WEINER: I addressed that issue before, okay,
15 I addressed that issue before. Your Honor, I'm not --

16 (interposing)

17 MR. WEINER: -- directing comments to her --

18 THE COURT: You talk to me, not to each other.
19 Okay?

20 MR. WEINER: Yes, exactly.

21 THE COURT: That's number one. Number two, you
22 need to let him speak because we let you speak.

23 MS. LIEBER: Yes, thank you.

24 MR. WEINER: Okay? So like I said before, it's
25 only recently that Mr. Summerstein decided to leave private

1 practice and take a job with Legal Aid. We're in the
2 process - it's my understanding that these defendants are
3 in the process of getting new counsel. I'm going to be
4 discussing it with them, and we hope to have that in place
5 shortly. Because we understand that the Trustee is going
6 to need to take that deposition, and I think separate
7 counsel should be present, representing Group Travel during
8 that time.

9 So as to all the rest of it that went on for, I
10 don't know, 20 minutes to half an hour, I don't want to go
11 through it. Much of it can be refuted, much of it we
12 expect will be when the facts of this case come out.

13 THE COURT: Facts get determined with evidence.

14 MR. WEINER: Exactly. Exactly. I mean probably
15 the most outrageous thing that was said is her client's
16 damages should be based on the income of the debtor. No,
17 it should not be based on the income of the debtor. It
18 should be based on the income of the debtor that's
19 attributable to violations of their copyright and
20 trademark. And that will be, you know, maybe 0.01 percent
21 of the income of the debtor, could maybe be attributable to
22 these violations, a very small number. That's why in our
23 claim objection motion we quantified it as \$1,450 at
24 maximum, 23 hits came in --

25 THE COURT: Again, I don't care so much about the

1 amount of their claim at this point.

2 MR. WEINER: So I understand --

3 THE COURT: I care about the fact that people,
4 that the Trustee or the Trustee's counsel or various
5 counsels wanted to depose people and they made themselves
6 unavailable, and, notwithstanding, we're here, and I don't
7 want to allow that to happen.

8 MR. WEINER: Well, all I'll say on that issue is
9 to the extent that the people that they want to depose are
10 my clients, I will do everything I can to make sure that
11 they appear at a deposition --

12 THE COURT: I appreciate it.

13 MR. WEINER: -- as any attorney who appears
14 before this court --

15 MS. LIEBER: Who are your clients?

16 THE COURT: No.

17 MS. LIEBER: I'm sorry.

18 MR. WEINER: Judge, this is completely
19 inappropriate. Number one, she's not supposed to address
20 me directly. Number two, I have appeared and filed answers
21 on behalf of clients. It's a matter of record who my
22 clients are. Okay? And I don't feel like I need to answer
23 questions put directly to me --

24 THE COURT: I agree.

25 MR. WEINER: -- which is, again, inappropriate.

1 THE COURT: I agree.

2 MR. WEINER: We could also start by her learning
3 how to pronounce my name.

4 MR. HERBST: Your Honor, just to conclude.
5 Certainly, we will go and complete the investigation that
6 Your Honor has discussed. We will complete the
7 depositions. If we have a problem, we'll be back --

8 THE COURT: And if you have a problem, come back
9 here --

10 MR. HERBST: We'll be back before Your Honor --

11 THE COURT: -- I'll sign orders, I'll send
12 marshals out to pick people up and have them show up here
13 for examinations.

14 MR. HERBST: I may even do that if I think people
15 are going to be recalcitrant. In concluding, I'd be remiss
16 if I just don't say. There's a lot of things that are
17 said. Your Honor took it as venting. I appreciate that.
18 There are a host of reasons why a trustee makes decisions,
19 a number of which are not going to be discussed in open
20 court because they lead to potential defenses and the like,
21 and it would torpedo a case, which is always the anomaly of
22 a 9019 settlement. You almost have to come in and lay out
23 some groundwork as to why you might have problems. That's
24 not before you; we're not going forward that way. At the
25 appropriate time, we will do that.

1 I'm not going to reply to all of the things that
2 were said of what happened, what didn't happen, especially
3 since a lot of these things happened even before counsel
4 for Digby was even retained. And whether a motion to
5 dismiss should have been filed at the beginning of the
6 case, well, Digby could have done that.

7 But that's not where we are. I'm also not clear
8 of what a motion to dismiss this case, although I think I
9 would be, would relish that fact, quite honestly, Your
10 Honor, would accomplish if Your Honor - I mean the reason I
11 wonder is because if you approve the settlement, they get
12 some money, and then they go to California. If you dismiss
13 the case, they go to California. So the little piece of
14 money I think would have been lost in that transaction. So
15 I'm not sure what would a dismissal accomplish.

16 We understand. We will complete our
17 investigation.

18 THE COURT: And, again, it's important that this
19 case, it's also important that the world out there know
20 that we're all watching, so that even if there was nothing
21 that went on here that was untoward, we're watching, we're
22 all watching.

23 MR. HERBST: I also want to say one more thing,
24 and I respect that counsel says there are new things that
25 cropped up. But when we entered into this stipulation,

1 this was not a self deal between Trustee counsel and the
2 defendants. Counsel participated, gave comments to the
3 stip, was actively involved. One of the things that was
4 bargained for very hard was a provision that left them
5 intact completely to go to California.

6 So I just want Your Honor to understand the flavor
7 of how this came about. I understand where we are today,
8 but counsel participated in comment on the stip. I
9 understand her view has changed of this settlement, but not
10 at the time we reached it.

11 THE COURT: But maybe it'll make you feel better,
12 because I think you heard it before, regardless of what she
13 said, after looking at some of the stuff that I've looked
14 at on both sides, I would - and, again, that's why I didn't
15 hear to you. This is what I wanted; I wanted more
16 investigation in how we should go forward --

17 MR. HERBST: We're going to do that, Your Honor.

18 THE COURT: -- regardless of --

19 MR. HERBST: We're going to do that, but I just
20 wanted Your Honor to understand the full reason.

21 MS. LIEBER: And, Your Honor, I'd like to just
22 respond to a couple of things. He said I participated. I
23 had just been retained. I didn't even know that they
24 hadn't done a deposition at that time, and I specifically
25 was so upset and I commented on that, I said how could you

1 have done this, and then I called Mr. Gershburg, I called
2 Mr. Pilevsky. They said that this was reached by the
3 Trustee. It seemed set in stone. I said this is really
4 problematic, and all I did is I commented to make the
5 settlement stronger. I wasn't saying that I liked this
6 amount.

7 What happened was though, after two months after I
8 commented and then I started to come up to speed, they then
9 wanted, they insisted that there be a release in the
10 settlement. So when we came to Your Honor in May before a
11 pretrial conference, there was no settlement because Mr.
12 Weiner's clients had insisted on a release. But during
13 this time, when depositions could've been taken, they
14 weren't, and specifically after this hearing on May 14, I
15 was promised by Trustee's counsel that they would then
16 proceed with notices of deposition which they didn't do
17 until after I filed the dismiss motion, and they would've
18 also filed a contempt motion to move for contempt for
19 failure to comply with a turnover which was back in April.

20 They didn't do that; they just filed - they
21 finally filed a settlement motion even though my client
22 sent emails to them showing them why they shouldn't settle
23 for this amount in June, and I sent emails after we were
24 coming up to speed. After getting the documents from the
25 DMV and seeing what was happening here, we vehemently

1 opposed this. So I just wanted to be there for the record.

2 The other thing is that - okay, I don't remember
3 at this point --

4 MR. GERSHBURG: Your Honor, may I state something
5 just for the record, just for a moment. And this will --

6 THE COURT: As long as you stop saying things for
7 the record before 7 o'clock.

8 MR. GERSHBURG: That's fine. I hope this will
9 bring it to a conclusion. Just in terms of reputation and
10 everything else, I've been before Your Honor before, and I
11 hope to be before Your Honor again. So my only issue - I
12 have several issues with what Miss Lieber represented - but
13 my only issue is the representation that I made a ton of
14 money and then I came into this, and we haven't really done
15 much when it comes to this case itself. I believe it to be
16 quite inappropriate, and I also believe it to be completely
17 - well, I should say it's not necessarily factual based on
18 everything that was there.

19 THE COURT: I understand that, because people are
20 frustrated and annoyed and upset and angry. I just want to
21 get to the bottom of who these defendants are, what their
22 relationships are, what went on here with respect, you
23 know, prior to this bankruptcy filing. You know, I want
24 what you want. We all want to figure it out. And to the
25 extent that you've had difficulty in trying to get to the

1 answers because people are not showing up where they need
2 to be showing up, I'll help you. That's all.

3 MR. GERSHBURG: Thank you, Your Honor.

4 MS. LIEBER: Oh, I just want to mention, yes, I'm
5 sorry, we're nervous about all of these vehicles and the
6 operations right now, and it's been three years. And even
7 though now we see that these are alter egos and this GTS is
8 operated by Nahim who Nahim is the brother-in-law, and Adir
9 Plaza, who had the title to the vehicles, they continue to
10 have revenue. They're continuing in business. And my
11 concern is that we have nothing to stop them, there's no
12 order here, there's no standstill here, there's no -
13 nothing has been commenced asking Your Honor for
14 declaratory judgment, that these assets and the revenue
15 really belong to the debtor because they're really one and
16 the same --

17 MR. GERSHBURG: We did. I believe we did --

18 MS. LIEBER: No. No, there's no injunction,
19 there's no injunctive relief --

20 THE COURT: Well, wait, again, nobody came before
21 me with a TRO but that's a hard standard.

22 MS. LIEBER: Right. But based on - the thing is
23 this, the declaratory, it was to a limited degree. But
24 this is the thing, we had a very, they had a very extensive
25 deposition of Mr. Zilberman, and so many admissions came

1 from that. And as I said before, they could move before
2 Your Honor --

3 THE COURT: They'll - I'm sure they're going to
4 go back in preparation to deposing other people and re-read
5 Mr. Zilberman's deposition at all three times. I'm sure
6 they're going to do that to refresh themselves. It's been
7 a long time since even the original motion to settle was
8 made, so I'm sure they're going to do that.

9 But at the end of the day, I will tell you, that
10 when they recover whatever they recover and they've got
11 whopping legal fees, it's because I've sent them back to
12 make them do a lot more work. So just so we understand
13 that, nobody has to work here for nothing.

14 MS. LIEBER: Right, but --

15 THE COURT: Everyone takes a risk that there's
16 not going to be anything to recover from, but by the same
17 token, nobody has to work for nothing. So bear in mind
18 that there - you can object at the time if you decide to,
19 but if we've sent them off to do umpteen number of
20 depositions now, and I have, that's going to reflect in the
21 fees at the end of the day, when you make your calculus as
22 to what there is for creditors. So just so you are aware
23 of that.

24 MS. LIEBER: Yeah, I appreciate that.

25 THE COURT: Okay, good.

1 MS. LIEBER: You know, and I appreciate what Your
2 Honor - Your Honor wants transparency, and I appreciate
3 that because that's what the Bankruptcy Code is all about,
4 and that's what it should have been about when this case
5 was filed. And the thing is --

6 THE COURT: It's going to work better, okay, if
7 after this hearing everybody takes a breath, and you're not
8 really on different sides on this thing. You started out
9 marching as one.

10 MS. LIEBER: We were what?

11 THE COURT: Okay, now you've got - I'm really
12 going to suggest that everybody takes a deep breath and you
13 try to stop the hostility between, you know, at least
14 between you and the Trustee and the Trustee's counsel.

15 MS. LIEBER: Well, I'm not sure what the Trustee
16 is working --

17 THE COURT: You want to be hostile towards
18 defendants, you know, that's a different story.

19 MS. LIEBER: I'm not sure what the Trustee is
20 working for. The Trustee is supposed to be a fiduciary of
21 the estate.

22 THE COURT: No, no, you need to stop now.

23 MR. HERBST: Your Honor --

24 (interposing)

25 THE COURT: Did I --

1 MR. HERBST: Yes, Your Honor, I'm sorry.

2 THE COURT: You don't have to - I said it.

3 MR. HERBST: I tried to sit quiet, but --

4 THE COURT: You need to stop that.

5 MS. LIEBER: Okay.

6 THE COURT: Okay? Nothing - again, what was done
7 here was people exercising business judgment and business
8 judgment in the context of difficulty of the expensive
9 litigation, there's some money here, claims may not be so
10 high. I mean they may be, we don't know. Again, you need
11 to stop criticizing the Trustee and counsel for the
12 Trustee. It's not going to make your job easier, it's not
13 going to make our job easier, and we don't need to have
14 that kind of hostility. We have enough difficulty here
15 figuring out what went on for you folks to continue this
16 hostility. I'm going to ask you to stop.

17 MS. LIEBER: And I agree. Trust me, we were very
18 - we were working very well.

19 THE COURT: You know, this is, the memory of
20 Peter Seeger, you should leave here with like a Kumbaya
21 moment. Try to work together. Mr. Herbst, anything else?

22 MR. HERBST: I'll stay quiet, Your Honor, so you
23 can close the court.

24 THE COURT: On that note. All right, now let's
25 pick a date. I don't know, May sometime?

1 MS. LIEBER: May --

2 MR. HERBST: Your Honor, I would probably suggest
3 early June only because I anticipate, given the nature of
4 this case, we will be back here a couple of times. And I
5 don't mean by Mr. Weiner's clients, but I do mean other
6 people.

7 THE COURT: All right, 33 through 36, I'm just
8 adjourning whatever's on today. 31 through 36. Till some
9 day in June. Why not? June 18 at 2.

10 MS. LIEBER: Can I just - for clar --

11 THE COURT: Unless somebody has a vacation plan.

12 MS. LIEBER: For clarification purposes, because
13 we're now in February, so that is -- what is that, five
14 months? What exactly does Your Honor contemplate --

15 THE COURT: Well, I'm leaving it to them. In
16 other words, what I've said here is that they can, again,
17 do these depositions in furtherance of what I - again, we
18 have a contested matter here on the settlement, I mean if
19 you want to put it into that context. Assuming we have a
20 settlement. We have the other issue of a contested matter
21 on a settlement because some people are saying there wasn't
22 authority for a settlement. But let's assume we have that
23 issue, plus we have a contested matter because you don't
24 think it should be settled.

25 MS. LIEBER: Right.

1 THE COURT: If we have a contested matter, we
2 would do a contested order, we'd be doing discovery on
3 that, but that would be directed at each other. But
4 instead of doing that, what I'm suggesting is that in
5 furtherance of, whether it's the presentation on the
6 settlement, because I said you don't have enough, that
7 they're going to go out and they're going to take further
8 depositions. Again, if there's a problem with the context
9 of that, somebody wants to say you already settled this,
10 how can you do that, then we'll just, Mr. Herbst, listen,
11 we'll do a contested matter order if people are giving you
12 a difficult time about the context in which you're doing
13 this.

14 MR. HERBST: Oh, I don't think so. No one did to
15 date, no one did to date, because essentially Your Honor
16 raised it correctly, is when the objection was filed, we
17 had a contested matter that normally the objector would be
18 doing the discovery and the depositions. We said we would
19 do it. The creditor was a little reluctant to do that. So
20 we said we'll do that. We got - that's what the
21 conversation was. I don't know what to tell you.

22 THE COURT: It doesn't matter. I've asked them
23 to do it anyway.

24 MR. HERBST: So as opposed to the creditor, we
25 did that. We did the deposition. We had another one

1 scheduled. That was the one Your Honor talked about.

2 There was documents produced during that time. But no one
3 raised the issue of whether it should be - because we have
4 a settlement that there needs to be a specific contested
5 matter order. It is what it is right now.

6 THE COURT: Well, if you need one, I'll give you
7 one, but I don't think you do.

8 MR. HERBST: I don't see that it's necessary.

9 THE COURT: Again, you may find once you've done
10 some of these depositions, that you don't want to go
11 forward with the settlement.

12 MR. HERBST: And, Your Honor, to the extent I run
13 into a problem, I could always do it under a 2004 if I
14 think I need to do it that way. I'm not concerned about
15 the format.

16 THE COURT: Okay, good. All right. What did we
17 say?

18 THE CLERK: June 18 at 2 --

19 MS. LIEBER: My only concern is that it is a long
20 time, and it is a very long time from now, and --

21 THE COURT: I did it on purpose.

22 MR. HERBST: Your Honor, she's welcome to conduct
23 all the depositions. We'll sit back and we'll watch.

24 THE COURT: I did it on purpose to give everybody
25 a long time.

1 MS. LIEBER: But we've already had - that's what
2 I've been saying. I mean there's been so much passage of
3 time after we filed the dismissal --

4 THE COURT: Again, they first have some - they're
5 going to go back and read some depositions. Then they're
6 going to start noticing people who are not going to be so
7 easy to get. Then we're going to talk, we're going to hear
8 about Purim and we're going to hear about Pesach and we're
9 going - which we have in March. In April we have Pesach.
10 You know, let's let them do their depositions.

11 If you want to - if there's a problem, okay, and
12 you want to have a status conference, call my chambers,
13 I'll schedule a status conference. We can do it
14 telephonically, and we'll save everybody some money.

15 MR. HERBST: Your Honor, if we finish early,
16 we'll call the Court for a date.

17 THE COURT: Good.

18 MS. LIEBER: Your Honor, also, I know you want to
19 adjourn the dismissal motion, but the factor is based on
20 his own testimony really justify the dismissal --

21 THE COURT: You want it dismissed?

22 MS. LIEBER: Yeah. I want it dismissed because
23 the truth is that even though we talked about lifting the
24 stay, we can't go back to the district court. We tried
25 that. We're stuck here. So, yeah, of course, I know that

1 - yes. You're laughing, but, yes, that's the obvious --

2 THE COURT: Well, I'm not going to rule on a
3 dismissal motion today.

4 (interposing)

5 MR. HERBST: I'll tell you, Your Honor --

6 THE COURT: First of all, there's the motion to
7 dismiss --

8 MR. HERBST: -- if Miss Lieber would like to
9 bring that on --

10 THE COURT: First of all, you did it by --

11 MR. HERBST: -- in the next week or two --

12 THE COURT: Wait a minute. You did a cross-
13 motion to dismiss. A motion to dismiss you've got to, you
14 know, notice the U.S. Trustee and all creditors --

15 MS. LIEBER: I did, I noticed all creditors, and
16 I gave more time than necessary. So I treated it as - even
17 though it was styled as a cross-motion, everybody got
18 notice, every single person got notice.

19 MR. HERBST: Your Honor --

20 MS. LIEBER: Everybody got notice.

21 THE COURT: I thought you stood here before and
22 said you didn't want it dismissed.

23 MR. HERBST: If she'd like to make that motion,
24 renew it --

25 MS. LIEBER: I want it - I'm sorry?

1 MR. HERBST: -- I would welcome that.

2 MS. LIEBER: Wait --

3 MR. HERBST: I'll eat the fees that we've
4 incurred in this case.

5 MS. LIEBER: I'm sorry, I didn't hear you.

6 MR. HERBST: Special counsel will eat the fees
7 he's incurred in this case. We will be happy to let the
8 case be dismissed and they can go back to California.

9 MS. LIEBER: Oh, that was my point. Does he want
10 - are you saying that you're consenting to dismissal?

11 THE COURT: I'm not.

12 MR. HERBST: I know Your Honor's not, but I am -
13 if that's a direction that creditor wants to go, we are
14 happy --

15 MS. LIEBER: Given the fact that I'm the only
16 creditor and the Trustee is not opposing it, why wouldn't
17 this case be dismissed? We have all the factors right now
18 that justify --

19 THE COURT: Because you stood here and told me a
20 lot of stuff in the last two hours is a reason why I
21 wouldn't dismiss it.

22 MS. LIEBER: But actually the reason why you
23 should dismiss is because of what I've told you. Actually,
24 the factors that warrant --

25 THE COURT: Again, I am not prepared to dismiss

1 this case today. If you're telling me you don't want that
2 long an adjournment on your motion to dismiss, I'll give
3 you less of an adjournment, but not much, because I want to
4 find out what went on here. I mean, again, once something
5 is before me and I have raised issues, I'm not prepared to
6 dismiss it, not till we get more information.

7 MS. LIEBER: Right, but if - I'm just looking at
8 --

9 MR. GERSHBURG: Your Honor, if I may. If Your
10 Honor is moving up the date for a motion to dismiss, then
11 should we still continue --

12 THE COURT: Yes. I'm not moving it up much.

13 MS. LIEBER: I mean if - I think it makes sense
14 to have them the same day.

15 THE COURT: Well, why don't we - here's what I'll
16 do. I will make a shorter time, okay, but we'll - I'll
17 allow us to do it by court call.

18 MS. LIEBER: By, I'm sorry?

19 THE COURT: For a status. I will do it for less
20 time just to see where we all are. Okay?

21 MS. LIEBER: Thank you.

22 THE COURT: Everything.

23 MS. LIEBER: Thank you.

24 THE COURT: But if anybody wants to appear
25 telephonically through court call, I will allow it because

1 I don't want them to continue to incur fees just standing
2 here and giving me status reports.

3 MR. GERSHBURG: If Miss Lieber would like to
4 renew her motion for that time --

5 MS. LIEBER: I'm sorry, I can't hear.

6 MR. GERSHBURG: -- she can do that. I have no
7 opposition if she wants to renew her motion.

8 THE COURT: Yes, I'm adjourning it. It's a
9 question of renewing the motion. Assuming she served
10 everybody --

11 MS. LIEBER: I did serve everybody.

12 THE COURT: -- I'm adjourning it and I'll deal
13 with it on the adjourn date. Or not. In the sense that I
14 really want to see what's gone on here. I thought you did
15 too, that's what I'm surprised about.

16 MS. LIEBER: No, this is the thing. At this
17 point, if the Trustee is going to take the position that we
18 have no claim and that all - really then this is just going
19 to be an exercise and it's further delay. And --

20 THE COURT: The Trustee hasn't taken --

21 MR. HERBST: I never said that.

22 THE COURT: -- hasn't taken that position.

23 MS. LIEBER: Well, they're asking us to quantify
24 the claim. The problem with quantification of the claim,
25 okay, is that, despite what Mr. Weiner said --

1 THE COURT: I understand that. No, no, no,
2 adjourn that too.

3 MS. LIEBER: Right, but the thing is that what we
4 would have wanted this Trustee would be to aggressively
5 litigate this case or settle for a very good number,
6 whatever, obviously. But if that's where we're headed,
7 that's fine, but if not, then we should know now because --

8 THE COURT: No, no, no, we should know after
9 they've done the depositions they're going to do and see
10 what they come up with.

11 MS. LIEBER: Okay. Okay.

12 MR. HERBST: Your Honor, I'm sorry, but the point
13 about the claim I raise is in every case. This is a
14 lawsuit. It's not a quantification of a claim. It's filed
15 and allowed until somebody objects. So \$300,000 would have
16 been deemed --

17 THE COURT: You have not - the Trustee has not
18 objected.

19 MR. HERBST: We have not objected. All we said
20 was it seems to make sense to allow it --

21 THE COURT: Other people have objected.

22 MS. LIEBER: Right, right, and they have no
23 standing.

24 (interposing)

25 MR. HERBST: -- to determine that.

1 THE COURT: I didn't rule --

2 MR. HERBST: And once it's determined, then Your
3 Honor would have another element in determining whether the
4 settlement were reasonable.

5 THE COURT: Let's go to May, a date in May --

6 MS. LIEBER: Thank you.

7 THE COURT: -- rather than a date in June.

8 MS. LIEBER: Thank you.

9 THE CLERK: May 14 at 2.

10 THE COURT: May 14 at 2, and we can, again, if
11 you want, you could do it telephonically. Just be in
12 touch.

13 MS. LIEBER: This May 14, so it's a status
14 conference or is it --

15 THE COURT: It's the adjourn date where I'll hear
16 from everybody as to where we are.

17 MS. LIEBER: Okay, so it's the adjourn date where
18 we - okay. Okay.

19 THE COURT: Everything, I'm adjourning
20 everything. Because I don't want to deny the settlement
21 today.

22 MS. LIEBER: Okay. So - okay.

23 THE COURT: Good.

24 MS. LIEBER: Status conference for May 14 at 2
25 o'clock.

1 THE COURT: On all the adjourned matters.

2 MR. HERBST: Are we don't, Judge, because I
3 really --

4 THE COURT: You need to go.

5 MR. HERBST: I need to go.

6 MS. LIEBER: Thank you, Judge.

7 THE COURT: We've heard twice now you need to go,
8 so you need to go.

9 MS. LIEBER: Thank you, Judge.

10 THE COURT: Safe travel.

11 THE CLERK: All rise.

12 (Proceedings concluded at 4:20:49 p.m.)

13 I, Carole Ludwig, court approved transcriber,
14 certify that the foregoing is a correct transcript from the
15 official electronic sound recording of the proceedings in
16 the above-entitled matter.

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CAROLE LUDWIG

April 8, 2014

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